Supreme Court, U.S.
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No. 88-352

In the Supreme Court of the United States

OCTOBER TERM, 1988

SENATOR GORDON J. HUMPHREY, ET AL., PETITIONERS

v.

NICHOLAS F. BRADY, SECRETARY OF THE TREASURY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOINT MEMORANDUM IN OPPOSITION OF RESPONDENTS THE SECRETARY OF THE SENATE, WALTER J. STEWART, AND UNITED STATES DISTRICT JUDGE SPENCER M. WILLIAMS, ET AL.

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The Secretary of the Senate, who is the disbursing officer of the Senate, and eleven district and circuit judges, who intervened to defend the constitutionality of the Federal Salary Act of 1967, as amended, join in the opposition of the Secretary of the Treasury to the petition for a writ of certiorari.

1. The Senate and Judicial Branch respondents adopt the Secretary of the Treasury's arguments that (i) the judgment of the court of appeals in favor of the Salary Act's constitutionality was required by this Court's summary affirmance in *Pressler* v. *Blumenthal*, 434 U.S. 1028 (1978); (ii) the Salary Act accords with the historical purposes and textual constraints of the Ascertainment

Clause; and (iii) the Salary Act's delegation to the President is properly channeled by the mechanisms established in the Act, the understanding of the law and its legislative intent manifested by the Commissions and Presidents who have implemented it over the past twenty years, and the policies enacted by Congress in the network of interrelated compensation statutes of which the Salary Act is a part.

2. While neither the Senate nor the Judicial Branch respondents took a position below on justiciability, it is clear that petitioners' justiciability question presents a theoretical dispute that is unlikely to affect the outcome of the case because the merits provide independently sufficient grounds for the dismissal of the complaint. Accordingly, the Senate and Judicial Branch respondents agree with the Secretary of the Treasury that review in this Court of the justiciability of the complaint is not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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